

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 13-6200

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

RANDY RONDELL SMITH,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Newport News. Robert G. Doumar, Senior District Judge. (4:04-cr-00093-RGD-TEM-1; 4:11-cv-00123-RGD)

Submitted: June 25, 2013

Decided: July 12, 2013

Before NIEMEYER, AGEE, and THACKER, Circuit Judges.

Dismissed in part; affirmed in part by unpublished per curiam opinion.

Randy Rondell Smith, Appellant Pro Se. Robert Edward Bradenham, II, Assistant United States Attorney, Newport News, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Randy Rondell Smith appeals the district court's orders denying relief on his 18 U.S.C. § 3582(c)(2) (2006) motion for reduction of sentence and denying his subsequent motion for reconsideration. Smith insists on appeal that his motion for reconsideration, in which he challenges his guilty plea, should have been construed as an amendment to his 28 U.S.C.A. § 2255 (West Supp. 2013) motion, and we treat the court's denial of the motion for reconsideration as also denying § 2255 relief to Smith.

An order denying relief under § 2255 is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(B) (2006). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the district court's assessment of the constitutional claims is debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000); see Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate both that the dispositive procedural ruling is debatable, and that the motion states a debatable claim of the denial of a constitutional

right. Slack, 529 U.S. at 484-85. We have independently reviewed the record and conclude that Smith has not made the requisite showing. Accordingly, we deny a certificate of appealability and dismiss the appeal in part.

With respect to the district court's order denying Smith's § 3582(c)(2) motion, we have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. United States v. Smith, No. 4:04-cr-00093-RGD-TEM-1 (E.D. Va. July 11, 2012).

We also conclude that the district court lacked the authority to revisit its earlier order denying § 3582(c)(2) relief to Smith. United States v. Goodwyn, 596 F.3d 233, 235-36 (4th Cir. 2010). Accordingly, we affirm the district court's denial of Smith's motion for reconsideration on that basis. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

DISMISSED IN PART;
AFFIRMED IN PART